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4 BEFORE THE STATE OF WASHINGTON
5 ENERGY FACILITY SITE EVALUATION COUNCIL

6 In re Application No. 96-1

7 of

8 OLYMPIC PIPELINE COMPANY

9 For Site Certification

COUNCIL ORDER NO. 732

ORDER ON STIPULATION
BETWEEN APPLICANT AND
YAKAMA INDIAN NATION

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11 **Nature of the Proceeding:** This matter involves an application to the Washington State Energy
12 Facility Site Evaluation Council (the Council) for certification of a proposed site in six
13 Washington counties for construction and operation of a pipeline for the transportation of refined
14 petroleum products between Woodinville and Pasco.

15 **Procedural Setting:** The Council convened a stipulation hearing on April 27, 1999, pursuant to
16 due and proper notice. The hearing was held before the Ernest Heller, Senior Administrative
17 Law Judge with the Office of Administrative Hearings, Council Chair Deborah Ross, and
18 Council members David Black (Kittitas County), Charles Carelli (Department of Ecology), Ed
19 Carlson (Department of the Military), Jim Cherry (Franklin County), Helen Fancher (Grant
20 County), Ellen Haars (Department of Health), Dean Judd (Department of Community, Trade,
21 and Economic Development), Gerry Prior (City of North Bend), Jenene Ratassepp (Department
22 of Fish and Wildlife), Gary Ray (Department of Transportation), Donna Smith (Port of Royal
23 Slope), Matt Stone (City of Snoqualmie), Walter Swenson (Department of Agriculture), Maxine
24 Taylor (Adams County and Port of Othello), and C. Robert Wallis (Utilities and Transportation
25 Commission).

26 The purpose of the hearing was for the Council to hear testimony and argument on a proposed
stipulation agreement, "Stipulations Between the Olympic Pipeline Company and the Yakama
Indian Nation," dated February 11, 1999. This agreement has been marked as Exhibit 4 in the
Council's adjudicative proceeding in this matter. By letter dated May 6, 1999, the stipulating
parties clarified their interpretation of Section III.B.1. of the agreement to Judge Heller and the
Council.

This order sets forth the Council's decision regarding this stipulation agreement.

1 **Discussion:**

2 In Prehearing Order No. 18, the Council generally described its “stipulation approval process.”¹
3 The Council emphasized that “approval” of a stipulation means that the Council accepts it as
4 binding between the stipulating parties and as setting appropriate minimum standards if the
5 project is approved.

6 No stipulation binds the Council either to approve or to deny the project. Further, no stipulation
7 is binding on any party other than the stipulating parties. Non-stipulating parties may present
8 relevant evidence during the adjudication to support a different standard.

9 The Council has considered the text of this stipulation and the testimony presented at the hearing.
10 If the project is approved, the Council accepts the stipulation, subject to the following conditions:

- 11 1. The Council is not foreclosed from adopting requirements more stringent than stated in the
12 stipulation.
- 13 2. The Council is not foreclosed from determining that it has jurisdiction to monitor and enforce
14 the terms of the stipulation. The Council may work with Yakama Indian Nation and the
15 Applicant to determine plans and appropriate responsibilities for effective monitoring and
16 enforcement of all stipulation requirements associated with construction and operation of the
17 project.
- 18 3. If the Council approves the project, the stipulation does not bind the Council to approve any
19 particular method for the crossing of the Columbia River, the Yakima River, or the streams
20 identified in Section III.C.1. of the agreement.
- 21 4. If the additional exploration or review of river and stream crossings enumerated in the
22 stipulation results in (i) the submission of additional evidence relevant to the Council’s
23 decision regarding site certification, (ii) amendment of the Application for Site Certification,
24 or (iii) changes in the Draft Environmental Impact Statement, there will be appropriate
25 opportunity to respond. The schedule may be adjusted accordingly.
- 26 5. To the extent that the stipulation requires the amendment or deletion of existing prefiled
testimony by the stipulating parties, the parties should promptly identify such testimony to
the Council for further action.

18 DATED and effective at Olympia, Washington, this 12th day of May, 1999.

19
20 /s/ Deborah Ross
21 Deborah Ross, Council Chair

22 **Notice to Participants.** Unless modified, this order will control the course of the hearing.
23 Objections to this order may be stated only by filing them in writing with the Council within ten
24 days after the date of this order.

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26 ¹ Prehearing Order No. 18, December 8, 1998, p. 4.